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INCOMING LETTER

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ACTION 1/28/94

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## UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

## REGION VIII

999 18th STREET - SUITE 500  
DENVER, COLORADO 80202-2466

**JAN 26 1984**

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Ref: 8HWM-FF

Mr. Mark N. Silverman  
Department of Energy  
Rocky Flats Office  
P.O. Box 928  
Golden, CO 80402-0928

re: Ponds .IM/IRA

Dear Mr. Silverman:

EPA has reviewed your January 24, 1994 letter regarding the Pond Water Management IM/IRA (94-DOE-00887). As lead agency, EPA is hereby denying your request for an extension of the period allowed for invoking dispute resolution.

In accordance with your stipulation, we will therefore consider dispute resolution invoked as of January 24, 1994. However, please note that Part 16 of the IAG requires you to submit a written statement of dispute "setting forth the nature of the dispute, DOE's position with respect to the dispute, and the information relied upon to support its position". If there is to be any reasonable prospect for informal resolution within the allowable 14 day timeframe, you must immediately provide us with a detailed statement including the required information.

In accordance with Part 16, elevation to the DRC will take place on February 7, 1994 if no resolution is reached by that time. Subsequent elevations will take place as required, in accordance with Part 16. While dispute resolution proceeds, the milestones established in our January 10, 1994, letter remain valid. Penalties for failure to meet these milestones will accrue as resolution proceeds and will be assessed as appropriate based on the outcome of the dispute.

We are taking this action because we do not see that any useful purpose will be served by granting the requested delay. Our position on the Ponds IM/IRA and the basis for directing that this action be completed have been clearly stated on the record for over two years. The chronology of events enclosed provides numerous references you may wish to consult which document how we arrived at the current impasse.

Our refusal to grant additional delays reflects our frustration with DOE's admitted delinquency in dealing with this matter. During the many interactions we have had with DOE

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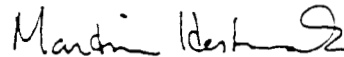
regarding the Ponds IM/IRA, we have not seen any progress made in resolving either internal jurisdictional disputes, or the "potential DOE-wide policy implications" which you alluded to. Although they have consistently been raised in attempts to derail the process, we have never been provided with any clear statement of what these problems might be, nor have we ever been asked to participate in resolving them. While we are perfectly willing to answer any specific questions you may have, we feel strongly that adherence to the agreed-upon dispute resolution process and the enforcement of established milestones provide the only reliable mechanism to ensure that the Ponds IM/IRA moves forward.

In response to your request that a meeting be scheduled as soon as possible, EPA agrees such action is needed. The meetings can take one of two tracks. First, we should meet early and often in the dispute resolution process to try and settle the dispute as quickly as possible. Secondly, if you find the record on this issue does not answer your questions, we will gladly participate in a meeting, outside the dispute resolution process, to discuss the questions you have on the information in the record.

I am sympathetic to your having to come up to speed very quickly on a number of complex issues. However, I feel we owe our stakeholders an early solution to the Pond Management issues, and any extension beyond the dispute resolution process timeframes is contrary to that commitment.

If you have questions or would like to discuss the progress of this effort, please contact Bill Fraser (EPA) at 294-1081.

Sincerely,



Martin Hestmark, EPA  
Manager  
Rocky Flats Project

Enclosure

cc: Joe Schieffelin, CDH  
Dave Norbury, CDH  
Martin McBride, DOE  
Jen. Pepe, DOE  
Gail Hill, DOE  
Bob Shankland, EPA-WM  
Peter Ornstein, EPA-ORC

## Chronology of Events - Ponds IM/IRA

December 19, 1991 - EPA and CDH meet with DOE and EG&G, explain that the regulatory framework applied to the ponds will be changed and provide the reasons why this is necessary. Compliance with Clean Water Act requirements, and consistency with CERCLA/RCRA program requirements are cited as the primary considerations.

June 26, 1992 - EPA sends a letter to DOE confirming that the NPDES discharge points and other aspects of pond regulation will be changed and urging DOE to begin developing an IM/IRA to take over regulation of the ponds in conjunction with the issuance of the new NPDES permit. The reasons for this action are clearly set forth, and remain unchanged during subsequent discussions.

October 22, 1992 - EPA and CDH send a letter requiring development of an IM/IRA for management of the ponds, pursuant to Paragraph 150 of the IAG. This action is taken in light of DOE's refusal to initiate an IM/IRA based on our previous requests.

November 9, 1992 - DOE invokes Dispute Resolution under the IAG, contending that since the ponds are in compliance with the current NPDES permit, there is no reason for an IM/IRA.

November 16, 1992 - DOE, EPA, and CDH meet to discuss the dispute over the directive to implement an IM/IRA for the ponds. Based on this discussion, DOE agrees to withdraw their dispute.

November 23, 1992 - DOE letter sent to EPA and CDH indicating they will "conditionally withdraw the invocation of the Dispute Resolution Process" and requesting another meeting to obtain further clarification of the requirement to perform an IM/IRA for the ponds.

January 21, 1993 - Scoping meeting held at which reasons for requiring the IM/IRA and expectations for the Decision Document are explained. DOE/EG&G indicate they understand the new NPDES permit will regulate discharges from the STP outfall and several stormwater discharges from the developed area of the plant, and pond operations and the terminal pond discharges will be regulated by requirements of the IM/IRA. This approach is as explained in previous correspondence.

February 3, 1993 - Second scoping meeting is held. DOE proposes a schedule, which begins schedule discussions continuing through the Spring and Summer.

August 17, 1993 - DOE/EG&G submits the last in a series of draft schedules for the IM/IRA. It fails to meet basic requirements for streamlining established on similar projects.

September 16, 1993 - Citing continued failure of schedule

discussions to reach consensus, CDH/EPA letter to DOE establishes November 22, 1993, milestone for delivery of Draft IM/IRA Decision Document. No dispute is raised by DOE.

November 8, 1993 - DOE submits letter to EPA/CDH asserting that they are "not legally bound to execute" an IM/IRA for the ponds and asserting they only "agreed to scope the possibility" of such an action out of good faith.

November 18, 1993 - EPA (as lead regulatory agency) sends letter indicating November 22, 1993 milestone for submittal of Draft Decision Document will be enforced under the IAG terms.

November 22, 1993 - DOE submits Draft Decision Document. Transmittal asserts this is "good faith" and argues that the milestone was invalid and compromised technical quality. Document clearly states (page 1-3) that DOE understands EPA/CDH intentions for changing the regulatory framework applicable to the ponds.

December 14, 1993 - EPA and CDH submit comments on the draft IM/IRA Decision Document. Some basic problems are noted, and a comment resolution meeting is scheduled.

December 21, 1993 - At the comment resolution meeting, DOE/EG&G announce they intend to fight any change in the regulatory approach to the ponds by any means available. Their reasons for this remain unclear. Comment resolution for the IM/IRA is suspended since this change undermines the foundation for the Decision Document.

January 10, 1994 - EPA sends letter establishing milestones for the Draft Final and Final IM/IRA DD and RS. Agreement is reached at staff level to attempt to restart the comment resolution process, with the understanding that EPA's position on the regulatory framework applicable to the ponds is established on the record and will not be open for discussion.

January 13, 1994 - Second comment resolution meeting held. EPA/CDH again review the basic requirements for the IM/IRA Decision Document and answer questions on specific comments. DOE/EG&G indicate the regulatory position and the required document revisions are clear.

January 24, 1994 - DOE submits letter requesting an additional 60 days to decide whether to invoke dispute resolution on the January 10, 1994, EPA letter. The DOE letter indicates they will consider a denial of the request to be an invocation of dispute, but provides no statement of what is being disputed or why, citing a need to evaluate "potential DOE-wide policy implications" as justification for the requested delay.